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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 HOANG MINH TRAN,
12 CDCR #AA-5994,

13 Plaintiff,

14 vs.

15 E. SCHROEDER; OMAR ORTEGA;
16 MICHAEL DALBRATT;
17 NICHOLAS RAMIREZ,

18 Defendants.
19

Civil No. 10cv2457 BTM (WVG)

ORDER:

**(1) DISMISSING DEFENDANT
WILLIAM D. GORE; and**

**(2) DIRECTING U.S. MARSHAL TO
EFFECT SERVICE OF AMENDED
COMPLAINT PURSUANT
TO FED.R.CIV.P. 4(c)(3)
& 28 U.S.C. § 1915(d)**

20 **I.**

21 **PROCEDURAL HISTORY**

22 On November 29, 2010, Plaintiff, Hoang Minh Tran, a state prisoner currently
23 incarcerated at California Men's Colony located in San Luis Obispo, California and proceeding
24 pro se, filed a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff also filed a Motion to
25 Proceed In Forma Pauperis ("IFP") pursuant to 28 U.S.C. § 1915(a). On May 2, 2011, the Court
26 granted Plaintiff's Motion to Proceed IFP and sua sponte dismissed his Complaint for failing to
27 state a claim. *See* May 2, 2011 Order at 5-6. On June 29, 2011, Plaintiff filed his First Amended
28 Complaint ("FAC").

1 **II.**

2 **SUA SPONTE SCREENING PER 28 U.S.C. § 1915(e)(2) AND § 1915A**

3 As the Court stated in its previous Order, the Prison Litigation Reform Act (“PLRA”)
 4 obligates the Court to review complaints filed by all persons proceeding IFP and by those, like
 5 Plaintiff, who are “incarcerated or detained in any facility [and] accused of, sentenced for, or
 6 adjudicated delinquent for, violations of criminal law or the terms or conditions of parole,
 7 probation, pretrial release, or diversionary program,” “as soon as practicable after docketing.”
 8 See 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Under these provisions, the Court must sua sponte
 9 dismiss any IFP or prisoner complaint, or any portion thereof, which is frivolous, malicious, fails
 10 to state a claim, or which seeks damages from defendants who are immune. See 28 U.S.C. §
 11 1915(e)(2)(B) and § 1915A; *Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc)
 12 (§ 1915(e)(2)); *Resnick v. Hayes*, 213 F.3d 443, 446 (9th Cir. 2000) (§ 1915A).

13 The Court finds that Plaintiff’s claims are now sufficiently pleaded to survive the sua
 14 sponte screening required by 28 U.S.C. §§ 1915(e)(2) and 1915A(b). Therefore, Plaintiff is
 15 entitled to U.S. Marshal service on his behalf. See *Lopez*, 203 F.3d at 1126-27; 28 U.S.C.
 16 § 1915(d); FED.R.CIV.P. 4(c)(3). Plaintiff is cautioned, however, that “the sua sponte screening
 17 and dismissal procedure is cumulative of, and not a substitute for, any subsequent Rule 12(b)(6)
 18 motion that [a defendant] may choose to bring.” *Teahan v. Wilhelm*, 481 F. Supp. 2d 1115, 1119
 19 (S.D. Cal. 2007).

20 **III.**

21 **CONCLUSION AND ORDER**

22 Good cause appearing therefor, **IT IS HEREBY ORDERED** that:

23 1. Defendant William D. Gore is **DISMISSED** from this action. See *King v. Atiyeh*
 24 (814 F.2d 565, 567 (9th Cir. 1987) (Defendants not named and all claims not re-alleged in the
 25 Amended Complaint will be deemed to be waived.) The Clerk of Court is directed to terminate
 26 this Defendant from the Court’s docket.

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